

**AGREEMENT BETWEEN
THE TOWN OF NANTUCKET, MASSACHUSETTS
AND
TETRA TECH RIZZO**

THIS AGREEMENT made effective _____, 2009, by and between the **TOWN OF NANTUCKET, MASSACHUSETTS**, a municipal corporation, acting by and through its Town Administrator, with offices at Town Hall, Nantucket, Massachusetts 02554 (hereinafter called the "TOWN"), and **TETRA TECH RIZZO** whose principal office address and state of incorporation are as set forth on Exhibit A (hereinafter called the "CONTRACTOR").

RECITALS:

WHEREAS, the TOWN desires to retain the CONTRACTOR to provide certain services for the TOWN as described, below, and the CONTRACTOR is willing to accept such engagement, all on the terms hereinafter set forth,

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 - ENGAGEMENT OF THE CONTRACTOR

- 1.1 The TOWN hereby engages the CONTRACTOR, and the CONTRACTOR hereby accepts the engagement, to perform certain services for the TOWN, as described in Article 2.
- 1.2 In the performance of any service under this Agreement, the CONTRACTOR acts at all times as an independent contractor. There is no relationship of employment or agency between the TOWN, on the one hand, and the CONTRACTOR on the other, and the TOWN shall not have or exercise any control or direction over the method by which the CONTRACTOR performs its work or functions aside from such control or directions which are consistent with the independent contractor relationship contemplated in the Agreement.

ARTICLE 2 - SERVICES OF THE CONTRACTOR

- 2.1 The CONTRACTOR will perform the services described in the Scope of Services set forth on Exhibit A (the "Work").
- 2.2 The CONTRACTOR shall report, and be responsible, to the TOWN and its designee (if any) as set forth on Exhibit A.
- 2.3 There shall be no amendment to the Scope of Services or Work provided for in this Agreement without the written approval of the TOWN. The TOWN shall be under no obligation to pay for any services performed by the CONTRACTOR which are not explicitly agreed to by the TOWN in writing.
- 2.4 The CONTRACTOR represents and warrants to the TOWN that the CONTRACTOR (including all of its personnel, whether employees, agents or independent contractors) will be qualified and duly licensed (if necessary) to perform the services required by this Agreement and further agrees to perform services in a professional manner adhering to a reasonable standard of care and in

accordance with all applicable local, state or federal ordinances, laws, rules and regulations. The CONTRACTOR will obtain any and all permits, bonds and other items required for the proper and legal performance of the work.

- 2.5 The CONTRACTOR represents and warrants to the TOWN that it is not a party to any agreement, contract or understanding which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this Agreement.
- 2.6 All written materials and any other documents (whether in the form of "hard" copies, graphics, magnetic media or otherwise) which are produced by the CONTRACTOR pursuant to this Agreement shall be deemed to be "work for hire" and shall be and become the property of the TOWN under applicable law or, to the extent that the "work for hire" doctrine does not apply, CONTRACTOR hereby grants to the TOWN a perpetual, royalty-free exclusive license in such items. The TOWN acknowledges that such materials are being prepared with respect to the specific project contemplated hereby and that any reuse of such materials by the TOWN in connection with any other project shall be at the TOWN's sole risk unless otherwise agreed to by the CONTRACTOR in writing.

ARTICLE 3 - PERIOD OF SERVICES

- 3.1 Unless otherwise provided on Exhibit A, the term of this Agreement shall commence on the date hereof and continue until the Work is completed to the Town's reasonable satisfaction.
- 3.2 The CONTRACTOR shall proceed with the Work promptly after receiving authorization to proceed and will diligently and faithfully prosecute the Work to completion in accordance with the provisions hereof. In any event, the Work shall be completed not later than the date set forth on Exhibit A. The CONTRACTOR acknowledges that time is of the essence of this Agreement.
- 3.3 If the CONTRACTOR is delayed in the performance of any of its obligations under this Agreement by the occurrence of an event which may not reasonably be anticipated or avoided or is otherwise beyond its control such as fire or other casualty, abnormal adverse weather conditions, acts of God (collectively, "Unavoidable Events") which materially and adversely affect its ability to perform the Work, then the time for the CONTRACTOR to perform the Work shall be extended for such time as the TOWN shall reasonably determine is necessary to permit the CONTRACTOR to perform in light of the effects of the Unavoidable Event.

If an Unavoidable Event occurs which makes the performance of the Agreement impossible without the expenditure of additional TOWN funds, the TOWN may, at its option, elect to terminate this Agreement upon thirty (30) days written notice.

ARTICLE 4 - PAYMENTS TO THE CONTRACTOR

- 4.1 The compensation to due to the CONTRACTOR shall be paid in the amounts, and in the manner, set forth on Exhibit B, attached hereto.
- 4.2 The CONTRACTOR will bill the TOWN at the completion of the work unless otherwise provided on Exhibit B, with one or more invoices broken down to show the quantity of work performed and the

percentage of the entire project completed, categories and amount of reimbursable expenses (if any), and provide such supporting data as may be required by the TOWN.

- 4.3 The TOWN will pay the CONTRACTOR upon review and approval of such invoices by the TOWN or its designee.
- 4.4 This project may be subject to budgetary restrictions which may limit the total amount of funds available for the work. Accordingly, unless otherwise stated on Exhibit B, the TOWN will not be obligated to pay any amount in excess of the maximum project amount without the express written approval of the TOWN.
- 4.5 The CONTRACTOR and its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the CONTRACTOR in the preparation of the documents, as reasonably determined by the TOWN.

ARTICLE 5 - TERMINATION

- 5.1 This Agreement may be terminated, with cause, by either the TOWN or CONTRACTOR, upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to fulfill its material duties hereunder in a timely and proper manner.
- 5.2 The TOWN shall have the right to terminate this Agreement for its convenience upon ten (10) days written notice.
- 5.3 Following termination of this Agreement, the parties shall be relieved of all further obligations hereunder except:
 - (a) the TOWN shall remain liable for payments for the services and/or expenses of CONTRACTOR accrued prior to the effective date of the notice of termination in compliance with this Agreement (less all costs reasonably incurred by the TOWN as a result of the CONTRACTOR's default, if any), as determined by the TOWN but for no other amounts including, without limitation, claims for lost profits on work not performed; and
 - (b) the CONTRACTOR shall remain liable for any damages, expenses or liabilities arising under this Agreement (including its indemnity obligations) with respect to work performed pursuant to the Agreement.

ARTICLE 6 - INSURANCE AND INDEMNIFICATION

- 6.1 The CONTRACTOR agrees to indemnify and save the TOWN harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by CONTRACTOR (including all its employees, agents and independent contractors) in performing the Work, or any breach of the terms of this Agreement by such CONTRACTOR and shall reimburse the TOWN for any and all costs, damages and expenses, including reasonable attorney's fees, which the TOWN pays or becomes obligated to pay, by reason of such activities, or breach. The provisions of this Section 6.1 shall be in addition to, and shall not be construed as a limitation on, any other legal rights of the TOWN with respect to the CONTRACTOR, in connection with this Agreement.

6.2 Before commencing work, the CONTRACTOR shall obtain and maintain, at its expense and from insurance companies of a Best Rating of A or better which are licensed to do business in the Commonwealth of Massachusetts, insurance as set forth below. If the CONTRACTOR is permitted to sub-contract a material portion of the Work, or is otherwise identifying a third party to perform services for the Town, the CONTRACTOR shall assure that such sub-contractor or other third party also has such insurance.

- (a) Workers' Compensation, covering the obligations of the CONTRACTOR in accordance with applicable Workers' Compensation or Benefits laws.
- (b) Commercial General Liability Insurance on an occurrence basis with a combined single limit of not less than \$1 million. Coverage is to include premises and operations, coverage for liability of subcontractors. The policy shall contain an endorsement stating that the aggregate limits will apply separately to the work being performed under this Agreement.
- (c) Automobile Liability Insurance of not less than \$1 million combined single limit covering owned, hired and non-hired vehicle use.
- (d) Such additional insurance as may be required to be carried by the CONTRACTOR by law.
- (e) Such additional insurance as the TOWN may reasonably require as set forth on Exhibit A.

CONTRACTOR shall maintain such insurance during the term of Agreement and give the TOWN twenty (20) days written notice of any change or cancellation of coverage. Each insurer providing policies hereunder shall waive its rights to subrogate claims against the TOWN. The TOWN will be added as an additional named insured with respect to each such policy and such endorsement shall be reflected on an Certificate of Insurance to be delivered to the TOWN upon the execution of this Agreement and at such times thereafter as the TOWN may reasonably request.

ARTICLE 7 - GENERAL PROVISIONS

- 7.1 Upon the expiration or the termination of this Agreement for any reason, all data, drawings, specifications, reports, estimates, summaries and other work product which have been accumulated, developed or prepared by the CONTRACTOR (whether completed or in process) shall become the property of the TOWN and the CONTRACTOR shall immediately deliver or otherwise make available all such material to the TOWN.
- 7.2 Neither party may assign, transfer or otherwise dispose of this Agreement or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party, and any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.
- 7.3 Except as otherwise expressly provided in this Agreement, any decision or action made by the TOWN relating to this Agreement, its operation, amendment or termination, shall be made by the Board, Committee or Authority of the TOWN specified in the initial paragraph of this Agreement, unless specifically authorized or delegated by a lawful vote of such body.
- 7.4 This Agreement, together with Exhibit A (Contractor, Scope of Work, Term), Exhibit B (Payments)

and Exhibit C (Tax Compliance Certificate) and any additional exhibits referred to therein, constitute the entire agreement of TOWN and CONTRACTOR with respect to the matters set forth therein and may not be changed, amended, modified or terms waived except by a writing signed by TOWN and CONTRACTOR. If there is any conflict between a term set forth in the body of this Agreement and a term set forth on Exhibit A or Exhibit B hereto, the term set forth in the Exhibit shall govern; however, if any term or provision of any document attached hereto or incorporated by reference conflicts with a term of this Agreement (including the Exhibits listed above), the term of the Agreement shall govern. Any notices required or allowed shall be to the person's address above by certified mail, return receipt requested.

- 7.5 This Agreement is governed by the law of The Commonwealth of Massachusetts and shall be construed in accordance therewith. The parties agree that exclusive jurisdiction for any action arising out of or relating to this Agreement shall lie with the state and federal courts having jurisdiction over the county and state in which the Town is located and the parties hereby irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the venue of any proceeding brought in such location and further irrevocably waive any claims that any such proceeding has been brought in an inconvenient forum.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

TOWN OF NANTUCKET,
MASSACHUSETTS:

CONTRACTOR:
TETRA TECH RIZZO

C. Elizabeth Gibson
Town Manager

Name Edward W. Ionata
Senior Vice President

Funding Org/Obj:

FEIN:

Approved as to Funds Available

Approved by NP&EDC

Constance Voges, Finance Director

Nathaniel Lowell

EXHIBIT A

CONTRACTOR, SCOPE OF WORK, TERM

1. **Name of Contractor:** Tetra Tech Rizzo

2. **State of Incorporation:** MA

3. **Principal Office Address:** One Grant Street, Framingham, MA 01701

4. **Description of Services (§2.1):**
Inter-terminal Shuttle scope:

Scope of Services

Our proposed scope of services will seek to define system requirements to provide an appropriate level of service for the proposed shuttle bus operation and an assessment of implementation and operating costs. We will explore expected system travel demands, vehicle requirements to service this demand, costs to acquire lease vehicles and annual operating expenses. With assistance from your staff, we will identify up to three potential remote satellite parking areas which will be serviced by the shuttle bus. Specific tasks are described in greater detail below.

Remote Satellite Parking Locations

Three potential locations for passenger and employee parking for the ferry terminals will be identified and evaluated. (We note that such a remote parking location could be utilized by other downtown employees besides the Steamship Authority and Hy-Line employees) Each site will be evaluated considering criteria such as: existing vs. required infrastructure, distance from the ferry terminals, potential environmental impacts related to on-site parking, cost of land acquisition (if required), cost of providing infrastructure, and finally, on-going operational costs. The results of this evaluation will be summarized in a technical memorandum. Based on these criteria and input from your staff, we will make a recommendation for the preferred site to be included in the shuttle bus feasibility study.

Shuttle Bus Feasibility Study

Travel Demand Estimates. The shuttle bus route will service the Steamboat Wharf, Straight Wharf and the preferred remote satellite parking lot site. We will work with you, the Steamship Authority and Hy-Line Cruises to estimate daily and peak condition travel demands on a shuttle bus system. These estimates will be subjective in nature and we may ultimately choose to base our analyses on an assumed range of values for passenger demand.

System Requirements. Based on forecasts of projected ridership we will then determine the size (passenger carrying capacity) and quantity of vehicles warranted to service the projected demand. For this evaluation alternative travel circulation routes will be considered and travel times determined for each route. Should the project schedule permit, field measurements will be made during the peak tourist season to realistically determine route travel times. Time will be added to the routes to account for pick-up/drop-off activity. Consideration may also be given to a variety of service headways which would reflect a possible range of service levels. During this phase of the study we will also identify potential system constraints. For example, through field reconnaissance we will identify site or on-street conditions which would make it difficult to accommodate pick-up/drop of activity. Potential conflicts with on-street parking or other bus operations will also be identified. The existing narrow roadways in downtown will be considered when evaluating various types of vehicles for use as shuttle buses.

Implementation Costs. Upon determining the system requirements we will contact the provider of comparable services to determine expected implementation costs. There may be a potential to provide this shuttle service using

electric powered vehicles and this potential and cost will be identified. These costs will be segregated into fixed costs (type and size of vehicles), vehicle lease or purchase, vehicle storage, vehicle transport, vehicle depreciation, insurance, licensing, signage, promotion, etc.) and variable costs that are dependent on vehicle trips/mileage (fuel costs, vehicle maintenance, staff salaries). Costs will be compared for alternative implementation strategies as appropriate. These may vary from the purchase and ownership of new vehicles; subcontracting the entire service to a qualified operator; and, or leasing sharing vehicles from/with another seasonal service with a compatible schedule. (Universities and ski resorts for example may have idle vehicles available during summer months.) Variable costs will be evaluated with respect to different service levels that may vary based on the number of attractions served and/or system headways.

Revenue Projections. Based on anticipated ridership forecasts estimates can be developed of potential revenue generation from the service. While it will be difficult to predict the elasticity of customer demand versus price, we can estimate revenue generation given projected fares (if any) and some assumptions regarding customer sensitivity to price. Finally, we will explore opportunities for government grants or subsidies for the service recognizing that such a service may have positive impacts on air quality, traffic congestion and carbon dioxide emissions.

Documentation

Study findings will be summarized in a draft report for your review and approval. Based on your review comments a final report will be prepared.

Meetings

We will attend a total of four meetings during the course of the project. These meetings will include:

- 1) A kick-off meeting
- 2) A meeting to discuss the results of the remote parking lot site evaluation and to select a preferred site.
- 3) A meeting to review the Draft Shuttle Bus Feasibility Report.
- 4) A meeting to present final findings to the town leadership and/or the public.

Fee

Fees for the above Scope of Services will be accrued on a time and expenses basis in accordance with the attached rate schedule and within a labor upset limit of \$13,500.

Schedule

We are prepared to begin work immediately upon receipt of this executed contract. We can complete our work within an eight-week time period provided that the time period includes two traffic conditions. We are not responsible for delays in performance caused by circumstances beyond our control or which could not have reasonably been anticipated or prevented.

5. **Person, Department, or Committee, if any, to whom CONTRACTOR reports (§ 2.2):**

T. Michael Burns 508-228-7238

6. **Term of Agreement (§3.1):** Through Completion of Work

7. **Completion Date (§3.2):** September 30, 2009

8. **Additional Insurance Coverage (§6.2(e)):** None

EXHIBIT B

PAYMENTS

1. Lump Sum Method
 - a. **Maximum Project Amount:** Not to Exceed \$13,500
 - b. **Payment Increments:** CONTRACTOR shall submit invoices for completed work based upon the schedule of values for approval and processing by the TOWN.
 - c. **Reimbursable Expenses (if any):** None.

EXHIBIT C

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. 62C, Sec.49A, the undersigned certifies under the penalties of perjury that it, to the best knowledge and belief of management, has filed all state tax returns and paid all state taxes required under law (if any, are so required).

By:

Name, President

Date

FEIN: